



## **10 ADMINISTRATION**

### **10.52 Fair Hearings**

*Effective: 6/1/96*

*Revised: 08/07/06*

**Changes in bold**

**POLICY:** The local project shall provide a hearing procedure through which any individual may appeal a local project action that results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program.

#### **PROCEDURE:**

##### **A. HEARING SYSTEM**

The local project shall provide a hearing that permits the individual to appeal a local agency decision to the State Agency.

##### **B. NOTIFICATION OF APPEAL RIGHTS**

At the time of a claim against an individual for improperly issued benefits or at the time of the denial of WIC Program participation, the local project shall inform each individual in writing of the right to a fair hearing, and of the method to request a fair hearing.

1. All applicants found ineligible, whether in person or through a telephone or written inquiry, shall be informed, in writing, of the reason for that determination and their right to a fair hearing.
2. An applicant or participant found ineligible for the WIC Program prior to or during the certification visit, shall be advised in writing of their ineligibility, of the reasons for the ineligibility, and the right to a fair hearing.
3. Provide the person with a copy of the **WIC Program Notice of Ineligibility (DPH 40085/40085S) including Right to Appeal Decisions** that notifies the applicant or participant of their right for a fair hearing. The **WIC Disqualification Notice (DPH 40080/40080S) notifies the participant of the right to request a hearing to appeal this decision.**
  - a) Provide the notice immediately if the applicant or participant is present, and as soon as possible (within 30 calendar days) if the application was mailed or was a telephone inquiry. The **WIC Hearing Request (DPH 40083/40083S) provides the hearing place, location and telephone number.**
  - b) **Inform the person that if they will need a language or sign language interpreter, or other accommodations for a disability during the Hearing,**



**this information should be included in the written request for a Fair Hearing.**

- c) Written notification is not required for telephone inquiries made when a name and address were not given.
- d) For participants, a copy must be retained in the participant or family's file for three full fiscal years; for applicants, retain a copy in an ineligible file for at least 60 days from the date of the WIC Program's action.
- e) Notification is not required at the end of a certification period, **voluntary withdrawal, or when the participant becomes categorically ineligible. See Policy 2.11 Notification of Ineligibility/Termination.**
- f) Each woman participant, parent, caregiver or guardian reads, or has read to them, the WIC Rights and Responsibilities (DPH 4161/4161S) and signs and dates the form. These same WIC Rights and Responsibilities are printed in the **WIC Folder (DPH 4160L/4160LS).**

### **C. REQUEST FOR HEARING**

The applicant/participant may request a fair hearing from the WIC Project(s) that took the adverse action. A request for a hearing is defined as any clear expression by the individual, the individual's parent, caregiver, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The local project shall not limit or interfere with an individual's freedom to request a hearing.

- 1. The local project will inform the individual how to request a fair hearing, and that any position or argument on behalf of the individual may be presented personally or by a representative such as a relative, friend or legal counsel.
- 2. Provide a **WIC Hearing Request (DPH 40083/40083S) which provides the hearing place, location and telephone number. It also lists the rights of the participant.**
- 3. **The local project will provide a language or sign language interpreter, or other accommodations for a disability during the Hearing, as requested.**
- 4. The request may be made orally or in writing. In the event an individual makes the request orally or through a telephone call and refuses or is not inclined to make the allegations in writing, the person receiving the call shall write up the request.



**D. TIME LIMIT FOR REQUEST**

Each individual must request a fair hearing within 60 days from the date the project mails or gives the applicant or participant the notice of adverse action.

**E. DENIAL OR DISMISSAL OF REQUEST**

The request for an appeal may be denied or dismissed if:

1. the request is not received within the 60 day time limit,
2. the request is withdrawn by the applicant/participant or representative,
3. the applicant/participant or representative, without good cause, failed to appear at the scheduled hearing, or
4. the applicant/participant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to WIC Program eligibility have changed in such a way as to justify a hearing.

**F. CONTINUATION OF BENEFITS**

1. Participants who appeal the termination of benefits within the 15 days advance notice of adverse action shall continue to receive WIC Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. **This is contingent on the participant being in valid certification period.**
2. Participants who appeal the termination of benefits after the actual date of termination (having been given 15 days prior notice of the termination) shall have benefits discontinued.
3. Applicants who are denied benefits at initial certification because of ineligibility (e.g., being over income, not at risk), or because of the expiration of their certification, may appeal the denial but shall not receive benefits while awaiting the hearing.

**G. RULES OF PROCEDURE**

Local projects shall process each request for a hearing under uniform rules of procedure and shall make these rules available for public inspection and copying.

1. A sample Fair Hearing Procedure for WIC Participants is in the Attachment. All agency-developed procedures used instead of this sample must be approved by the State WIC Program **WIC Vendor and Integrity Monitoring Coordinator or Program Operations Coordinator**.



2. The agency Fair Hearing Procedure shall be kept up-to-date

#### **H. HEARING OFFICIAL**

The WIC Project shall annually designate a fair hearing official to preside at the fair hearing. **The Hearing Official and panel members should receive orientation about the WIC Program or already have knowledge of the WIC Program.**

1. The Hearing Official shall be an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The duties of the hearing official are:
  - a) administer oaths or affirmations. **Before the hearing, the examiner asks all witnesses to raise their right hand at once and then ask them “Do you swear or affirm, under the penalty of perjury, that the testimony you are about to give in this case will be truthful and accurate.” They must respond “yes” on record.**
  - b) ensure that all relevant issues are considered
  - c) request, receive and make part of the hearing record evidence determined necessary to decide the issues being raised
  - d) regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing
  - e) order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the applicant/participant and the local project
  - f) render a hearing decision exclusively based on the hearing record which will resolve the dispute

#### **I. CONDUCT OF THE HEARING**

The local project shall offer a fair hearing that is no more than three weeks (15 working days) from the date of the receipt of the request for a fair hearing.

1. The local project shall provide at least 10 working days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedures with the notice. **Provide a WIC Hearing Request (DPH 40083/40083S) which provides the hearing place, location and telephone**



**number. It also lists the rights of the participant. Provide a copy of the agency's Fair Hearing Procedure for WIC Participants.**

2. The time and location of the fair hearing shall be accessible to the applicant/participant, and consider work and school schedules as needed. **If requested, a language or sign language interpreter, or other accommodations for a disability will be provided for during the Hearing.**
3. **The Hearing may be canceled if the applicant/participant has not communicated late arrival and is late by 45 minutes.**
4. The local project shall also provide the applicant/participant or representative an opportunity to:
  - a) examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
  - b) be assisted or represented by an attorney or representative
  - c) bring witnesses
  - d) argue his/her points without undue interference
  - e) question or refute any testimony or evidence, including an opportunity to confront or cross-examine adverse witnesses
  - f) submit evidence to establish all pertinent facts and circumstances in the case
5. **Depending on the severity of the case, the hearing may be tape recorded. The recording would not necessarily need to be transcribed.**
6. **A sign-in form should be used at the hearing to document who was present. Everyone in attendance should print and sign their name with their title. The form should be dated.**
7. **If allegations of discrimination are made during the hearing, this must be reported. See Policy 10.51 for procedures.**

#### **J. RESCHEDULING THE HEARING**

An applicant/participant may reschedule a hearing date no more than twice under the following condition:



1. A first request to reschedule may be granted by the WIC project upon specific request to the project. **The project may determine a reasonable time limit for a request to reschedule the hearing, such as 24 to 48 hours.**
2. A request to reschedule a hearing a second time shall be granted by the WIC project only for good cause. Good cause occurs when the applicant/participant or representative cannot attend the scheduled hearing due to circumstances beyond his or her control, including but not limited to serious illness, unavailability of transportation to the hearing due to mechanical problems, or severe weather conditions.
3. The WIC project may reschedule the hearing date under circumstances similar to those stated in 1. and 2. above.

#### **K. FAIR HEARING DECISIONS**

Decisions of the hearing official shall be based upon the application of appropriate federal law, regulations and policy as related to the facts of the case as established in the official hearing record.

1. The Official Hearing Record consists of either 1.) a recording or verbatim transcript of testimony and exhibits, along with all supporting documents, or 2.) an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding:
  - a) constitute the official record for a final decision by the hearing official
  - b) project shall make and retain the hearing record and make these available for copying and inspection, to the applicant/ participant or representative at any reasonable time
2. The decision of the hearing official shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. **The decision will become part of the record.**
3. Within 45 days of the receipt of the request for the hearing, the local project shall notify the applicant/participant or representative in writing of the decision and the reasons for the decision.
  - a) If the decision is in favor of the applicant/participant and benefits were denied or discontinued, benefits shall begin immediately, but are not retroactive.



- b) If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local project shall terminate any continued benefits, as decided by the hearing official.
- c) If the decision regarding repayment of benefits by the applicant/participant is in favor of the agency, the local project shall resume its efforts to collect the claim, **even during the pendency of an appeal of a local-level fair hearing decision to the State agency.**

#### **L. APPEAL OF LOCAL PROJECT DECISION**

The applicant/participant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within 15 working days of the mailing date of the hearing decision notice.

- 1. If the decision being appealed concerns disqualification from the WIC Program, the applicant/ participant shall not continue to receive benefits while an appeal to the State Agency of a decision rendered on appeal at the local level is pending.
- 2. The decision of a hearing official at the local level is binding on the local project and the **Wisconsin WIC Program State Office** unless it is appealed to the State level and overturned by the State hearing official.

**Send appeals to:**

**Division of Hearings & Appeals**

**5005 University Ave., Suite 201**

**P. O. Box 7875**

**Madison, WI 53707-7875**

- 3. The State and local project shall make all hearing records and decision available for public inspection and copying; however, the names and addresses and participants and other members of the public shall be kept confidential.

#### **M. JUDICIAL REVIEW**

If a State level decision upholds the local project action and the applicant/participant expresses an interest in pursuing a higher review of the decision, the State Agency shall explain the applicant's/ participant's right to appeal the decision to Circuit Court.

#### **ATTACHMENTS**

Sample Fair Hearing Procedure (Rev 08/06)